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FROM : USMISSION BERLIN

SUBJECT : RUDOLF HESS: GERMAN COURT REJECTS HESS' LATEST DEMANDS AGAINST THE FRG

REF :

E.O. 12065 : GDS 3/31/87 (KORNBLUM, JOHN C.) OR-P

TAGS : PGOV, AKB, BQG

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1. (U) Summary. A federal court recently rejected an appeal lodged by Hess' lawyer, Alfred Seidl, to compel the FRG to take stronger international action to secure Hess' release from Spandau Allied Prison. The court found that the FRG had made efforts to secure Hess' release, and that it was appropriate for the FRG to decide the limits of the international action it could take in protecting the interests of a German vis-a-vis third States. Seidl took special note of the Court's remark that Hess may have been sentenced and confined contrary to international law and announced that he will make stronger efforts to achieve Hess' release. Comment. Seidl has been undaunted by past judicial rejections of his pleas. We are confident that he will continue his efforts, as promised, on the international level. End Summary.

2. (U) On 24 February 1981, the 7th Chamber of the Federal Administrative Court in Berlin rejected the appeal filed by Rudolf Hess' lawyer against the judgment of the State Appellate Administrative Court in Muenster. The appeal asked the court to adjudge that the government, in addition to its humanitarian efforts, should take steps on a foreign policy level to achieve Hess' release from prison.

3. (U) Through Alfred Seidl, Hess' present attorney, former attorney at Nuremberg, and former Bavarian Minister

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for the Interior, Hess demanded that the federal government publicly declare that his imprisonment "violates binding international law and fundamental human rights and that it constitutes a crime." Additionally, he demanded that the Chancellor, the Foreign Minister and the Minister of Justice of the Federal Republic of Germany should be bound by the court to apply to the Four Powers, the United Nations, the European Court for Human Rights and The Hague International Court of Justice for Hess' release on legal grounds.

4. (U) Seidl argued that Hess has been imprisoned for 34 years "without any legal basis," meaning "that he is arbitrarily deprived of his freedom." He further noted that Hess was sentenced to life imprisonment for planning, preparing and leading a war of aggression but that he was acquitted of the charge of war crimes and crimes against humanity. Seidl pointed out that at the outbreak of World War II, international law contained no provision on the basis of which the head of a state, a secretary or another leading functionary could be held personally responsible for or be prosecuted for preparing and waging a war of aggression.

5. (U) Professor Horst Sendler, the presiding judge, in setting forth the reasons for his judgment, stated that an obligation by the government to take steps in addition to its endeavors thus far could neither be derived from the basic rights of the plaintiff nor from other federal laws. He emphasized that a government is bound in principle to protect its citizens and their interests toward foreign nations and that every citizen may assert a claim for protection. However, when pondering the question how to meet this obligation, the government must also take into consideration its interests in foreign policy. Although the federal government must consider the basic rights of the person concerned, it may not neglect the nation's foreign policy interests. The court held that no objections were raised to the claim of the federal government that, after humanitarian appeals had failed, any steps by the government based on legal considerations as requested by Hess and his attorney would be even less successful and besides could result in considerable damage to the government with respect to its foreign policy. The court did offer the view, however, that it cannot be excluded that the sentence against Hess and his subsequent confinement "may constitute a violation of international law." However, the court also pointed out that Hess had been "a leading figure" of the national-socialist regime which had brought immeasurable suffering to mankind.

6. (U) After the pronouncement of the judgment, Seidl announced that he is now going to make even stronger efforts on an international level to achieve the release of Hess. He stated that the

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court's indication of a possible violation of international law is of greatest importance to the defense.

7. (U) Comment. Seidel has been Hess' lawyer for many of the years which Hess has spent in Spandau Prison. He remained Hess' lawyer after the Nuremberg trials, but withdrew when he assumed political office in Bavaria. He later resumed as Hess' lawyer in the late 1970's. For many years after the beginning of Hess' confinement, Seidl was his only visitor at Spandau since Hess refused to see his family. Seidl has shown remarkable perserverance in his repeatedly unsuccessful efforts to secure Hess' release. He has directed a number of private and open letters and pleas to the Four Powers, the U.N. and the European Commission on Human Rights. With the apparent full confidence of Hess' son, Wolf-Ruedeger, Seidl has instituted numerous actions in West German courts either to seek Hess' release on German constitutional grounds or to compel the FRG to cease defraying (through its budget for occupation costs) the expenses for maintenance of the prison. Although he has been unsuccessful in all of these efforts, it appears that he has not been dissuaded and that in the future he will pursue his objective outside Germany in international fora. There does not appear to be any reason to believe that he will be more successful in the future than he has been in the past, so long as the Soviets inflexibly insist that Hess must serve his full life sentence.

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